

# **CALIFORNIA PARTICIPATING ADDENDUM**

## **AGREEMENT NUMBER 7-08-70-13**

Under  
WESTERN STATES CONTRACTING ALLIANCE (WSCA)  
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE MASTER AGREEMENT  
("WSCA Master Agreement")  
[State of Utah Contract Ref. No. AR-233]

### **Participating State:**

Participating State Name	State of California ("Participating State")
Office/Department Name:	Procurement Office
Primary Business Address:	707 Third Street, Second Floor, MS 202 West Sacramento, CA 95605-2811
<i>Participating Addendum</i> State Contract ID #:	7-08-70-13

### **Contractor:**

Contractor Name:	Cisco Systems Inc. ("Contractor" or "Cisco") 170 West Tasman Drive San Jose, California 95314
<i>Participating Addendum</i> Cisco Contract ID #:	(INSERT #)

This WSCA *Participating Addendum* between the above-referenced Participating State and Contractor (collectively hereafter referred to as the "Parties") is entered into for good and valuable consideration, the mutual receipt of which is hereby acknowledged by the Parties, on the terms and conditions set forth below as of the date of last signature below (the "Effective Date" of this *Participating Addendum*).

#### **1. Authority & Scope**

The State of California hereby represents to Cisco that it has legal authority to enter into a Participating Addendum under this WSCA Master Agreement and to make this agreement available to other entities under the California Public Contract Code Sections

10298(b), 10299(b) and 12109 and the Government Code Section 14624. This is inclusive of all State and local government agencies, which is any city, county, district or other governmental body empowered to spend public funds per California Public Code Section 12110.

## **2. State-Specific Constitutional & Statutory Requirements**

Notwithstanding WSCA Master Agreement, Attachment B, §§ 9.4 and 17.2, the State of California will not indemnify CISCO or its fulfillment partners.

## **3. Incorporation of WSCA Master Agreement**

The WSCA Master Agreement, as now or hereafter amended made by the original parties thereto during the term of this *Participating Addendum*, is incorporated as if set forth at length. All rights and obligations between the Parties are governed by the terms of the WSCA Master Agreement, as amended by this *Participating Addendum*. ("Agreement") Capitalized terms in this *Participating Addendum* shall be defined as set forth in the WSCA Master Agreement, Attachment B.

To the extent of a conflict in terms between the WSCA Master Agreement and this *Participating Addendum*, the following descending order of precedence shall apply:

1. *Participating Addendum – Appendix A:*
  - a. *Statement of Work (SOW)*
  - b. *State of California:*
    - i. *General Provisions for IT (GSPD 401-IT dated April 12, 2007)*
    - ii. *IT Purchase Special Provisions 01/21/03*
    - iii. *Maintenance Special Provisions 01/21/03*
    - iv. *Software Special Provisions 01/21/03*
    - v. *Personal Services Special Provisions 02/08/07*
2. *Participating Addendum* (remainder of this document)
3. WSCA Master Agreement, Attachments A-E, as now or hereafter amended by the State of Utah and Cisco Systems, Inc.

## **4. State-Specific Purchasing Guidelines**

- a. The provisions of this *Participating Addendum*, Appendix A, apply to all transactions under this *Agreement*.
- b. Only Fulfillment Partners authorized under this Agreement are able to directly receive Purchase Orders or payments under this Participating Addendum. The State of California contract number as set forth at the top of page 1 of this *Participating Addendum* is required to appear on every Purchase Order issued under this *Addendum*.
- c. The discounts identified in the WSCA Master Agreement are the minimum discounts that will be offered by Cisco under this Agreement. All authorized Fulfillment Partner's have the option, in their sole discretion and as their sole legal obligation to the Customer, to quote additional, incremental discounts on an order-by-order basis

throughout the contract term. Cisco will use its reasonable efforts to assist in resolving any dispute regarding the incremental discounts, if needed.

d. Contractor shall deliver a copy of the required quarterly volume reports described in the WSCA Master Agreement, Attachment B, Section 16, to the State's Primary Point of Contact set forth in Appendix B, and to pay the Participating State an administrative fee in the amount of one (1%) percent of sales under this *Participating Addendum* which is to be calculated on the same basis as set forth in the WSCA Master Agreement, Attachment A, for the State of Utah administrative fee. The Participating State will accept the Contractor's reports and fee directly from Authorized Fulfillment Partners named under this *Participating Addendum*.

## **5. Cisco Fulfillment Partners**

Cisco has the right to utilize alternate Fulfillment Partners, including Value Added Resellers (VARs) and/or distributors and dealers (hereafter "Reseller[s]") as fulfillment agents under this *Agreement*, e.g., for direct order taking, processing, fulfillment or provisioning.

Subject to approval of the Participating State, Fulfillment Partners may be added at any time during the *Agreement* term at the sole discretion of Cisco, with a minimum of two Resellers and no set maximum number of Resellers who may be used, subject to the approval of the Participating State. Cisco, in its sole discretion, is not required to add and may delete upon thirty (30) days written notice any Reseller who does not meet Cisco's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation.

The name, address and approved contact number for Cisco approved Fulfillment Partners shall be separately set forth at the Contractor's website, as amended by Cisco during the term of this *Agreement*, including any applicable technical certifications or general limitations (e.g., geographic) or Cisco qualifying criteria as applicable (qualifying criteria).

## **6. Ordering/Invoices**

Purchasers may place orders directly only through these Fulfillment Partners, or through Cisco on products or services only provided through Cisco. Only those Fulfillment Partners approved and listed during the term of this *Agreement* at Contractor's WSCA – California website are authorized to directly receive purchase orders, invoice Customers, and receive payment from Purchasers on Contractor's behalf. All authorized Fulfillment Partners are eligible to quote pricing to Purchasers for procurements under this *Participating Addendum* which otherwise meet the Partner's qualifying criteria.

Except as otherwise set forth in the qualifying criteria, Cisco will not, directly or indirectly, restrict any Fulfillment Partner's participation or ability to quote pricing for a Customer. Fulfillment Partner will not offer less favorable pricing discounts than the contract discounts established by Cisco under the WSCA Master Agreement. However, any additional incremental discounts available to WSCA Purchasers, if offered, may be

provided in the discretion and as the sole legal obligation of the Fulfillment Partner to the Participating State.

The WSCA Master Agreement number and the State Contract Number must appear on every Purchase Order placed under this *Agreement*.

Authorized Fulfillment Partners are responsible for delivering required contract reports and remittances to the WSCA Contract Manager in accordance with the requirements and schedule for delivery established in the WSCA Master Agreement.

**7. Product & Services Offering**

The **full suite** of product and service offerings available under the WSCA Master Agreement may be procured under this *Participating Addendum*.

**8. Primary Point of Contact**

The Parties will keep and maintain current at all times a primary point of contact for administration of this *Participating Addendum*. The Parties' primary points of contact shall be set forth in this *Participating Addendum*, Appendix B - "Primary Points of Contact."

**9. Term**

The term of this *Participating Addendum* shall begin on the date of last signature of both parties ("Effective Date") and shall continue for a period ending on the Termination Date of the WSCA Master Agreement or when this Participating Addendum is terminated in accordance with the WSCA Master Agreement, whichever shall occur first.

**10. Entire Agreement/Amendment**

This *Agreement* constitutes the entire agreement between the parties concerning the subject matter of this *Agreement* and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This *Agreement* may be modified only by a written document executed by the parties hereto.

**11. Notices**

Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Cisco to [Agreement-notice@cisco.com](mailto:Agreement-notice@cisco.com)), (provided that the original document

is placed in air mail/air courier or delivered personally, within seven days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this *Agreement* (and notices to Cisco shall be further addressed to the Office of the General Counsel, Attn: Contract Notice) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from Customer, to the address to which the last invoice under this *Agreement* was sent before notice is served.

Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on Cisco.com or by e-mail or fax.

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The WSCA Master Agreement, together with this *Participating Addendum* and its Appendices A-C, set forth the entire *Agreement* between the Participating State and Cisco with respect to the subject matter and supersedes and replaces all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the *Agreement* shall not be added to or incorporated into the *Agreement* by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this *Agreement* shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this *Participating Addendum* as of the date of last execution by the Parties below.

**CISCO SYSTEMS, INC.**  
**Contractor**

**STATE OF CALIFORNIA**  
**Participating State**

**Ted Hull, Vice President, Finance**  
**Customer Solutions Finance**

By: \_\_\_\_\_ **SIGNATURE ON FILE** \_\_\_\_\_

By: \_\_\_\_\_ **SIGNATURE ON FILE** \_\_\_\_\_

Printed Name: \_\_\_\_\_ **Mark Coyle** \_\_\_\_\_

Printed Name: \_\_\_\_\_ **Jim Butler** \_\_\_\_\_

Title: \_\_\_\_\_ **VP CSE Ops** \_\_\_\_\_

Title: \_\_\_\_\_ **Deputy Director** \_\_\_\_\_

Date: \_\_\_\_\_ **5/14/08** \_\_\_\_\_

Date: \_\_\_\_\_ **5/23/08** \_\_\_\_\_

## Appendix A

### State –Specific Purchasing Guidelines

## **STATEMENT OF WORK**

### **Modifications to State of California Standard Terms**

#### **Part A. "GENERAL PROVISIONS FOR IT" (GSPD 401-IT, dated April 12, 2007)**

The following terms supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California *"General Provisions for IT (GSPD 401-IT dated April 12, 2007)"*.

#### **1. Definitions:**

##### **a) "Acceptance Tests"**

means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment. "Specifications and other Attachments incorporated herein" are defined as the manufacturer's standard product literature and specifications.

##### **f) "Commercial Software"**

means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract. All Products sold under this Agreement are 'Commercial Software'.

##### **m) "Designated CPU(s)"**

means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein for which the Purchaser has paid the required license fee.

##### **z) "Mean Time Between Failure (MTBF)" *[Deleted – N/A]***

##### **aa) "Mean Time Between Repair (MTBR)" *[Deleted – N/A]***

##### **cc) "Operational Use Time" *[Deleted – N/A]***

##### **dd) "Performance Testing Period" *[Deleted – N/A]***

##### **ll) "Software"**

means any computer code in object code or executable code format and whether embedded in or bundled with the Products in any manner, including as firmware, and even if provided separately on disks or other media or by electronic transmissions, together with all bug fixes, revisions and upgrades thereto, an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.

## qq) "Virus"

means any codes, programs or commands designed to: (1) without authorization from Customer, alter, damage or erase equipment, computer data or programs; or (2) permit unauthorized access to Customer's systems that is intended to destroy or cause any of those systems to malfunction. Notwithstanding the foregoing, the term "Virus" does not include any: (i) Software features or functionality that, when first delivered, acts in accordance with Cisco Product Documentation by restricting the number of users, sessions, servers, CPUs, ports, or issued and outstanding IP addresses to the number licensed under the Agreement, or (ii) Software features or functionality performing valid duties or function under the Agreement or as otherwise listed in Cisco Product Documentation.

rr) "Statement of Work (SOW)" – The Statement of Work (SOW) (this Appendix A) shall define any changes made to the California and WCSA terms and conditions which are mutually acceptable for the performance of this Agreement. Any additional terms included on the individual purchase documents shall be limited to those terms specifically allowed under this Participating Addendum. Cisco rejects any purchase document that includes terms that have not been previously allowed by this Appendix A, Statement of Work.

ss) "Acceptance Date" – The date, defined as no more than three (3) days after delivery, on which State accepts Contractor Deliverables which will result in title transfer, initiation of warranty, and payment of invoice.

[Original text of remaining paragraphs of Section 1 are unchanged.]

## 2. **CONTRACT FORMATION** *[Deleted in its entirety - N/A.]*

## 7. **COMPLIANCE WITH STATUTES AND REGULATIONS**

- a. Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); and (ii) and the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d. [Original text remains unchanged.]
- e. [Original text remains unchanged.]



**8. CONTRACTOR'S POWER AND AUTHORITY:**

The Contractor represents that it has full power and authority to grant the rights herein granted. The State's sole and exclusive remedy for Contractor's breach of this section is as set forth under this SOW, Section 39, below. Further, Contractor represents that it will not enter into any arrangement with any third party which might abridge any previously granted license rights of the State under this Contract.

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); and (ii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**9. ASSIGNMENT**

Except as expressly provided under WCSA Master Agreement, Attachment B, Section 23, this Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

**10. WAIVER OF RIGHTS**

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion.

**11. ORDER OF PRECEDENCE** *[Deleted in its entirety – N/A]***12. PACKING AND SHIPMENT:**

- a. All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i. show the number of the container and the total number of containers in the shipment; and
  - ii. the number of the container in which the packing sheet has been enclosed.
- b. All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c. Shipments must be made as specified in this Contract, as it may be amended.

**14. DELIVERY:**

Contractor shall meet the delivery and completion schedules specified in this Contract. The State's sole and exclusive remedy with respect to a default in meeting the delivery and completion schedule shall be to exercise its right to cancel an individual order in accordance with this SOW, Section 22. With respect to the shipping and delivery terms specified in WSCA Master Agreement, time, if stated as a number of days, shall mean business days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

**16. INSPECTION, ACCEPTANCE AND REJECTION:**

- a. Cisco meets ISO 9001 and 14001 certifications and meets the standards therein with respect to quality assurance standards for Cisco products.
- b. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- c. The State shall give written notice of rejection of Product Deliverables within three (3) business days after receipt of such Deliverables. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to the product warranty under this agreement. If the State does not provide such notice of rejection within three (3) business days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance shall not be construed to waive any limited warranty rights provided under this Contract with respect to any nonconformity.
- d. *[Deleted – N/A]*
- e. *[Deleted – N/A]*

**17. SAMPLES:**

- a. Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State during the testing period. Samples may be provided, at customer's request, subject to the terms of the Contractor's "Demo Depot" or "Try and Buy" Programs as set forth in the WSCA Master Agreement, Attachment C. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b. Samples, if not destroyed by tests, may, as provided under the "Demo Depot" or "Try and Buy" agreement, be returned to Contractor in its original condition at Contractor's expense.

**18. WARRANTY:**

- a. Warranties provided by Contractor are set forth in WSCA Master Agreement, Attachment B, § 21 and cannot be changed at the field level by either party. The Limited Warranties in WSCA Master Agreement, Attachment B, § 21, a) begin upon acceptance of the goods or services in question and b) end at the end of the warranty periods set forth in WSCA Master Agreement, Attachment B, § 21. Contractor warrants that the Hardware Deliverables will be free from material defects in materials and workmanship under normal use. This limited warranty extends only to the original user of the Product. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco's or its service center's option, shipment of a

- replacement within the period and according to the replacement process described in the Warranty Card, or a refund of the purchase price, if the Hardware is returned to the party supplying it to Customer, if different than Cisco, freight and insurance prepaid. Cisco replacement parts, used in Hardware repair, may be new or equivalent to new. Cisco's obligations hereunder are conditioned upon the returned of affected Products, in accordance with Cisco's then-current Return Material Authorization (RMA) procedures. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will substantially conform to its published specifications. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer, if different than Cisco. In no event, does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.
- b. Contractor warrants that Deliverables furnished hereunder will be free, at the time of delivery, of harmful code (i.e. computer 'virus, as that term is defined under § 1 of this SOW.) Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction. If Contractor breaches the warranty under this paragraph (b), Contractor will notify Customer as soon as Cisco becomes aware of the problem.
- c. Exclusions:
- i. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
  - ii. Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) installation, operation, maintenance or use of Software in combination with or on products other than as specified by Contractor, (C) abnormal physical or electrical stress, misuse, negligence, or accident; or (D) is sold or, in the case of Software, licensed, for beta, evaluation, testing or demonstration purposes for which Cisco does not receive a payment of purchase price or license fee.
  - iii. Contractor does not warrant third party Hardware or Software sold under this Agreement. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers warranties, Contractor will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above for Contractor's Products and Services.
- d. All warranties shall inure to the original user or licensee as set forth in paragraph a, above.
- e. The State's exclusive remedy and Contractor's sole obligation will be limited to, at Contractor's option:
- i. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
  - ii. refund of all amounts paid by the State for the nonconforming Deliverable or service. The payment obligation will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f. **EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WHICH ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. THIS**

**DISCLAIMER SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.**

**22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**

- a. The following provisions shall supersede the provisions of the WSCA Master Agreement, Addendum B, § 12.2.2 with respect to the State's rights. The State may terminate this WSCA Participating Addendum for its convenience in whole, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof, which shall be a minimum of thirty (30) business days from the date of the notice. The Participating Addendum shall automatically terminate at the end of the notice period. No future orders may be received after such termination date

Any cancellation under this provision shall not affect the rights and obligations of either party or the validity of orders outstanding at the time of cancellation, e.g., any right of and Participating State to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any prior order.

Individual Product orders placed against this contract may be cancelled for convenience or rescheduled in accordance with Cisco's *Order Management Tool* and *OM Guidelines*, provided that a customer cancellation request is received by Cisco more than ten (10) business days prior to Cisco's scheduled order shipment date without further obligation to the supplier. Order cancellation requests submitted to Cisco less than ten (10) business days prior to the promised shipment date will be already in manufacturing and will not be accepted by Cisco.

- b. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- i. Stop work as specified in the Notice of Termination.
  - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract under Purchase Order(s) or Statements of Work (SOWs) issued by the State and accepted by Contractor prior to the effective date of termination established pursuant to paragraph (a), above.
  - iii. Terminate all subcontracts to the extent they relate to the work terminated.
  - iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c. Unless otherwise set forth in this Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
- i. The Contract price for Deliverables or services ordered by the State and not previously paid for, adjusted for any savings on freight and other like charges, including but not limited to the price for all product, services, maintenance and training deliverables under a valid Purchase Order or Statement of Work issued prior to the date of termination; and

- ii. The total of:
  - A. All other amounts previously due and payable prior to the date of termination, and
  - B. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
  - C. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
  - D. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- d. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

**23. TERMINATION FOR DEFAULT:** *[Deleted in its entirety - N/A.]*

**25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT**

- a. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to materially conform to the manufacturer's published performance specifications of the Deliverable during the warranty period, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and/or at Contractor's sole discretion to immediately repair or replace all such rejected items or refund the amount paid for such items as described in Section 18 above. .
- b. In addition to any other rights and remedies the State may have under this agreement, the State may require Contractor, at Contractor's expense and with Contractor's approval, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c. In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any direct damages sustained by the State will be covered by the "Limitation of Liability" and are subject to the exclusive remedies statements otherwise set forth in this SOW.
- d. The State reserves the right to offset the amount of all direct damages caused by the Contractor as are expressly due as enumerated under the Contract against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

**26. LIMITATION OF LIABILITY:**

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited as stated WSCA Master Agreement, § 17.3 and 17.4.
- b. The foregoing limitation of liability shall not apply (i) to liability under paragraph 39, below, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights under the WSCA Master Agreement, Attachment B, Section 9; (ii) to claims arising under this SOW Clause # 27, and WSCA Master Agreement, Attachment B, Section 17.2 indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iii) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any of the foregoing actions. The parties expressly agree that the damages enumerated in this paragraph 26 (b) constitute direct damage.
- c. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d. **IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITATIVE DAMAGES, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES.**

**27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to tangible personal property pursuant to WSCA Master Agreement, Attachment B, Section 17.2.
- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

**28. INDEMNIFICATION:**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a. The State will notify Contractor promptly of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate

in such action at its own expense with respect to attorneys' fees and costs (but not liability); and  
(ii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

### 33. CONTRACT MODIFICATION:

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

Any appropriately approved and executed amendment to the WSCA Master Agreement executed by Cisco and the lead State of Utah ("Amendment") shall be automatically effective and binding upon the Participating State on the effect date of such Amendment, unless the Participating state, within thirty (30) days of the Amendment being posted online, provides a written notice to Cisco that the Participating State does not agree to the Amendment ("notice"). Upon receipt of such Notice, the Parties will in good faith either: i) negotiate a mutually acceptable resolution; or ii) notify the other Party in writing that the Party wishes to terminate the Participating Addendum for convenience pursuant to WSCA Master Agreement, Attachment B, Section 12.2, or to this SOW, Section 22.

Notwithstanding the foregoing, the Parties have determined that during the Contract term, certain ongoing changes will be made to the WSCA Master Agreement product and service offerings in the normal course of business with the consent of the Lead State and without formal amendment of this *Participating Addendum*, as set forth in the following illustrative list:

- (a) Updates to Cisco's U.S. Global Price List to reflect changes in offerings, prices or rates for existing Product(s) or Service(s);
- (b) Updates to add new commercial Product(s) or Service(s) offerings to the extent reasonably related to and within the stated scope of WSCA Master Agreement, Attachment E;
- (c) Changes to Product(s) or Service(s) published manufacturer's commercial specifications or product/service descriptions; and
- (d) Changes to effect data changes, additions or deletions regarding authorized Fulfillment Partners

Any of the foregoing will be effective immediately upon the Participating State without the need for a formal amendment of the *Participating Addendum*.

### 34. CONFIDENTIALITY OF DATA:

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated in writing confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

**36. DOCUMENTATION**

- a. The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder in accordance with Contractor's standard commercial practices. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b. *[Deleted – N/A]*

**37. RIGHTS IN WORK PRODUCT: *[Deleted in its entirety – N/A]*****39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

- a. Subject to and consistent with WCSA Master Agreement Attachment B, § 9.2, Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right, as defined in § 9.2 by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will reasonably cooperate in enforcing them.

The defense and payment obligations set forth in this Section 39(a) will be conditional upon the following:

- 1. The State will notify Contractor of any such claim promptly, in writing, and tender thereof within a reasonable time; and
  - 2. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); and (ii) the State will reasonably cooperate in the defense and in any related settlement negotiations, and provide all information and assistance reasonably requested by Cisco in connection with the conduct of the defense and settlement of the IPR claim and subsequent appeal.
- b. Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at Contractor's option and expense, either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non infringing. If none of these options in Contractor's sole judgment can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Product, in which case Purchaser will return the Product to Cisco and Cisco will refund to Purchaser the price originally paid by Purchaser to Cisco for the Product, as depreciated or amortized by an equal annual amount over three years from date of original shipment.



- c. The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i. The combination, operation, installation, maintenance other than in accordance with Contractor's instructions, or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
  - ii. The amount, duration of use which Purchaser makes of the Product, revenue earned by Purchaser from services it provides which utilize the Product, or services offered by Purchaser to external or internal customers;
  - iii. The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor supplied Operating Software; or
  - iv. The modification by the State of the Equipment furnished hereunder or of the Software; or
  - v. The combination or utilization of Software furnished hereunder with non contractor supplied Software.

**THIS SECTION 39 STATES THE ENTIRE OBLIGATION OF CISCO AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF PURCHASER, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO PURCHASER SOLELY FOR ITS BENEFIT AND IN LIEU OF, AND CISCO DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT.**

d. *[Deleted - N/A]*

e. *[Deleted - N/A]*

#### **40. EXAMINATION AND AUDIT:**

Examination and audit shall be governed by WCSA Master Agreement, Attachment B, Clause 38. During the audit, Contractor shall provide and make available an authorized representative to provide access to required information and records.

#### **42. STOP WORK:** *[Deleted in its entirety – N/A]*

#### **50. FOUR-DIGIT DATE COMPLIANCE:**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

Cisco represents that Products which it has designated as "Year 2000 Compliant" (or Status Description "Green"), as set forth in the "Compliance Table," (including accompanying Notes), located in Cisco's "Year 2000 Compliance" web pages beginning at <http://www.cisco.com> (the "Year 2000 Pages"), are "Year 2000 Compliant," meaning that, as delivered to Customer:

- A. The Products accurately process data and time calculations before and during the years 1999 and 2000;
- B. All manipulation of time-related data yields the desired results for valid date values within the application domain;
- C. Date elements in those Products use four digit storage and indicate century to eliminate the chance for errors;
- D. If a date element exists without a century indication, the correct century continues to be unambiguous and produces accurate results; and Software accurately processes date and time data when used in conjunction with other Year 2000 compliant software products.

Should a Product that is so identified as "Year 2000 Compliant" not be Year 2000 Compliant, or should Cisco otherwise breach the foregoing representation, Cisco will, as Customer's sole and exclusive remedy, repair or replace the Product so that it becomes Year 2000 Compliant or, if Cisco is unable to repair or replace the Product to make it Year 2000 Compliant, Cisco will refund the purchase price of the Product paid to Cisco, provided that Customer returns the Product to Cisco, as originally delivered by Cisco (except for normal wear and tear) and pursuant to Cisco's then-current RMA policy. The foregoing representation and remedy shall only apply to Products returned prior to January 31, 2001, or to Products returned before the Products are no longer supported pursuant to Cisco's standard support policies, whichever event first occurs. Each Product ordered will be subject to Cisco's then-current "Year 2000 Pages" as of the date of delivery.

Restrictions. This warranty does not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing or demonstration purposes for which Cisco does not receive a payment of purchase price or license fee.

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**Part B. IT PURCHASE SPECIAL PROVISIONS  
(01-21-03)**

**The following sections supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California IT Purchase Special Provisions (dated 01-21-03).**

1. **LIQUIDATED DAMAGES** *[Deleted in its entirety- N/A]*

2. **TITLE:**

Title to the Equipment shall remain in the Contractor and assigns, if any, until acceptance. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State upon acceptance at no additional charge, together with title to the Machine on which it was installed.

3. **PRICE DECLINE** *[Deleted in its entirety – N/A]*

4. **PRICE DECLINE** *[Deleted in its entirety – N/A.]*

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**Part C. MAINTENANCE SPECIAL PROVISIONS**  
**(Dated: January 21, 2003)**

**The following terms and modified sections supersede and replace, in their entirety, the referenced sections originally contained in Appendix A, State of California "Maintenance Special Provisions" (dated January 21, 2003).**

Contractor's standard commercial service offerings, e.g., maintenance training and professional consulting services, are offered for sale under this agreement. Terms set forth in the State's "Maintenance Special Provisions" below and in this Appendix A are only binding upon the Contractor where such features are offered for sale in the Contractor's standard service plans as an element of the maintenance plan coverage.

Nothing in the State of California's "Maintenance Special Provisions" or this SOW shall be construed to require the Contractor: a) to create, modify or customize Contractor's standard commercial offerings listed under Contractor's then-current U.S. Global Price list notwithstanding any requirement in the State's terms; or b) to provide free of charge any feature offered under Contractor's standard commercial service description unless customer has paid for the enhanced service plan under which such feature is offered.

**5. Maintenance Coverage:****a. Period of Maintenance Coverage:**

1) The State may select a period or periods of maintenance coverage offered under the Contractor's standard commercial services plans set forth in Cisco's U.S. Global Price List, as stated in the Statement of Work, in accordance with the following:

(a) A minimum maintenance charge as set forth in the then-current Cisco U.S. Global Price List entitles the State to maintenance coverage during the Principal Period of Maintenance.

(b) The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the ordering documents.

2) The hours of maintenance coverage for a Machine on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All Machines covered under this Contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any Machine in the System.

3) *[Deleted – N/A]*

b. Preventative Maintenance (scheduled) – *[Original text remains unchanged.]*

c. Remedial Maintenance (unscheduled) - *[Original text remains unchanged.]*

**6. Maintenance Charges**

a. The maintenance charges described include all maintenance costs as described in Contractor's standard services description, and the State will pay no additional charges unless specifically set forth in this Contract. Maintenance discounts off then-current Cisco U.S. Global Price List shall be firm for the

Contract period of the Participating Addendum, provided however that Contractor reserves the right to change its U.S. Global Price List for services at any time during the contract term.

Service Orders placed under the Participating Addendum shall not be subject to price escalation during the maintenance term set forth in the Order.

b. [Original text remains unchanged.]

c. [Original text remains unchanged.]

d. [Original text remains unchanged.]

**7. Maintenance Credit for Inoperative Machines** *[Deleted in its entirety – N/A]*

**9. Relocation of Equipment**

- a. In the event the Equipment being maintained under the terms and conditions of this Contract is moved to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location, subject to and in accordance with the terms of Contractor's standard advance move notification process and policies.
- b. The charges of the Contractor to dismantle and pack the Equipment and installation at the new location shall be at the rates set forth in the Statement of Work. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any.
- c. If Contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility will be applicable. If the move is conducted by other than Contractor, State agrees to pay re-certification charges to Contractor at rates set forth in the Statement of Work.

**10. Termination** *[Deleted in its entirety – N/A]*

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**Part D. Software Special Provisions**  
**(Dated: 01/21/03)**

**The following terms and modified sections supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California "Software Special Provisions (dated January 21, 2003)".**

**1 License Grant**

- a. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of Contractor's standard commercial license terms, a non-exclusive, non-transferable license to use the Software Products now or hereafter listed in the WSCA Master Agreement (hereinafter referred to as "Software Products").
- b. State may use the Software Products in the conduct of its own business, and any division thereof.
- c. The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the ordering documents. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the ordering documents. Subject to the State's compliance with the Contractor's stated use and notice policies. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
- d. By prior written notice and subject to the State's compliance with Contractor's standard license rights and its published use and notice policies, the State may re-designate the CPU in which the Software Products are to be used. The re-designation will be effective upon the date specified in the notice of re-designation subject to compliance with the advance notice requirements.

**2. Encryption/CPU ID Authorization Codes**

- a. When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.
- b. In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c. When changes in designated CPUs occur, the State will notify the Contractor (or its Fulfillment Partner) and the change will be processed in accordance with the notification policies set forth at cisco.com. Upon receipt of such notice and where otherwise allowed under Contractor's standard product license terms, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

**3. Fees and Charges**

Upon acceptance of Software to the State, in accordance with Paragraphs 5 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in the WSCA Master Agreement. Charges will commence on the Acceptance Date. The Contractor shall render

invoices for recurring charges or single charges in accordance with the payment terms set forth in the WCSA Master Agreement.

**4. Maintenance**

- a. Software error corrections, if and when made available by the Contractor, will be considered maintenance and will be delivered by Contractor to Customer without additional charge for the duration of a customer's paid maintenance service contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:

1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.

2) [Deleted – N/A]

3) [Deleted – N/A]

- b. Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the WCSA Master Agreement.
- c. If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the WCSA Master Agreement.

**6. Right To Copy or Modify** *[Deleted in its entirety – N/A]*

**7. Future Releases** *[Deleted in its entirety – N/A.]*

**E. Personal Services Special Provisions**  
**(Dated: 02/08/07)**

**The following terms and modified sections supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California "Personal Services Special Provisions (dated February 08, 2007)."**

**1. Contract Type**

- a. Unless otherwise specified on the ordering document(s), the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.
- b. To the extent that additional work not foreseen at the time this Contract is executed must be accomplished, Work Authorizations (also referred to as Cisco's "Change Request Process"), as described in the Statement of Work, will be the means for defining and authorizing such work on a Labor Hour basis.

**2. Personnel**

- a. Contractor personnel shall perform their duties remotely and on the premises of the State in accordance with Cisco's standard commercial offerings, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State in the Statement of Work.
- b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel within sixty (60) days of the date it receives such notice from the State, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.

Contractor is authorized, without further approvals of the State, to subcontract any or all work under this SOW, and to use subcontractor personnel in fulfillment of its duties, provided that Cisco remains liable as Prime Contractor for its Deliverable.

- c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract.

**3. Responsibilities of the State**

- a. The State shall provide normal office working facilities and equipment reasonably necessary for Contractor performance under this Contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the ordering document.



- b. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the ordering document.
- c. The Contractor will not be responsible for any delay, cost increase, or other consequence to the extent that it is caused by the State's failure to fulfill responsibilities set forth herein. In the event of any claim for equitable adjustment to price, schedule, or both, the parties will negotiate in good faith regarding execution of a Contract amendment per a Cisco "Change Request" in substantially the form set forth in Appendix C. Should the Contractor determine that a delay exists or is probable due to a failure of the State, the Contractor will promptly notify the State in writing.

#### **4. Unanticipated Tasks**

- a. In the event that additional work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this Section and Cisco's "Change Request" process will be employed.
- b. For each item of unanticipated work not specified in the Statement of Work, a Work Authorization ("Cisco Change Request") will be prepared in accordance with the sample attached as Appendix C.
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization ("Cisco Change Request"). Such Work Authorization ("Cisco Change Request") shall in no way constitute a Contract other than as provided pursuant to this Contract nor in any way amend or supersede any of the other provisions of this Contract.
- d. Each Work Authorization ("Cisco Change Request") shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor, the job classification or approximate skill level of the personnel to be made available by the Contractor, an identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, an estimated time schedule for the provisions of these services by the Contractor, completion criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, the Contractor's estimated work hours required to accomplish the purpose, objective or goals, the Contractor's billing rates per work hour, and the Contractor's estimated total cost of the Work Authorization ("Cisco Change Request").
- e. All Work Authorizations ("Cisco Change Request") must be in writing prior to beginning work and signed by the Contractor and the State.
- f. The State may, at any time, by a single written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the consulting work, or any work quoted by hourly performance, called for by this Contract for a maximum period of up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
  - (i) Cancel the Stop Work Order; or

- (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work subject to the availability of appropriate personnel. The Parties shall mutually agree to an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
- (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. In such event, the State shall pay Cisco for all work performed and accepted in accordance with the affected terms of the ordering documents up to the effective date of the Stop Work Order at the agreed upon prices, fees and expense reimbursement rates set forth in the affected ordering documents, as follows:

- (i) For any Milestone-based payment obligations, the State shall pay for any amounts owing for: (1) all Milestones completed prior to the effectiveness of termination for which a Milestone/service Completion Certificate in the form substantially as that attached hereto as Appendix C has been executed by the parties, (2) the Services actually performed towards Milestones that have not been completed as a result of such termination (on a prorated basis of the fee associated with such Milestone, taking into account the portion of work actually performed satisfactorily in respect of such terminated Milestone and for which a Milestone/service completion certificate has been executed by the parties), (3) reimbursement for any costs and expenses incurred by Cisco prior to the effective date of the Stop Work Order (as permitted by the applicable order document), and (4) reimbursement for any actual and reasonable costs and expenses committed to by Cisco prior to the effective date of the Stop Work Order (as permitted by the applicable terms of the order).
- (ii) In the event the order provides compensation for the work on a fixed-price basis (including hourly fee basis) and the ordering document does not include Milestones, including but not limited to for subject matter experts and/or consulting services, the State shall pay for (1) a prorated amount of such fixed fee based on the portion of work actually performed satisfactorily in respect of the affected order (taking into consideration the percentage of Services and Deliverables completed satisfactorily in accordance with the affected scope of work as of the effective date of the Stop Work Order and for which the parties have agreed in writing to such satisfactory completion percentage), (2) reimbursement for any costs and expenses incurred by Cisco prior to the effectiveness of termination (as permitted by the applicable order documents), and (3) reimbursement for any actual and reasonable costs and expenses committed to by Cisco prior to the effectiveness of termination (as permitted by the applicable order documents).

There shall be no other charge or penalty for such termination.

The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

- g. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:

1) If, in the performance of the work, the Contractor determines that a Work Authorization ("Cisco Change Request") to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the State in writing of the Contractor's estimate of the work hours which will be required to complete the Work Authorization ("Cisco Change Request") in full. Upon receipt of such notification, the State may:

- (a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld), or
- (b) [Delete - N/A]
- (c) Alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

2) The State will notify the Contractor in writing of its election within seven (7) business days after receipt of the Contractor's notification. If notice of the election is given to proceed, the Contractor may expend the estimated additional work hours or services. The State agrees to reimburse the Contractor for such additional work hours.

## **5. Invoicing and Payment for Services**

- a. During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to the State of identified Deliverables, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:

1) The number of Deliverables provided to the State divided by the total number of Deliverables required to be delivered to the State, less a ten percent (10%) withhold, less any amounts previously invoiced; or

2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less a ten percent (10%) withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent (10%).

- b. For those Milestones which do not involve delivery to the State of identified Deliverables, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent (10%) withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.
- c. Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to the State, may be submitted for payment. Nothing herein will be construed to waive or contradict any requirement of California Public Contract Code Section 12112 or any similar or successor provision.

- d. In the event that work not specified in the Statement of Work is performed with the State's written consent, invoices for services as reflected on Work Authorizations will be submitted to the State for payment.
- e. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.
- f. In the aggregate, invoices reflecting progress payments (vs. separate and distinct tasks) will not exceed ninety percent (90%) of the ceiling amount of the Contract, with the balance to be invoiced upon completion of the Contract, in accordance with the acceptance criteria set forth herein.
- g. *[Deleted – N/A]*

## 7. Conflict of Interest

During the performance of this contract, should the Contractor become aware of a financial conflict of interest that may foreseeably allow an individual or organization involved in this Contract to materially benefit from the State's adoption of an action(s) recommended as a result of this contract, the Contractor must inform the State in writing within 10 working days. If, in the State's judgment, the financial interest will jeopardize the objectivity of the recommendations, the State shall have the option of terminating the Contract.

Failure to disclose a relevant financial interest on the part of the Contractor will be deemed grounds for termination of the Contract with all associated costs to be borne by the Contractor and, in addition, the Contractor may be excluded from participating in the State's bid processes for a period of up to 360 calendar days in accordance with Public Contract Code section 12102(j).

# State of California Standard Terms

## General Provisions for IT (GSPD 401-IT dated April 12, 2007)

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.

a) **"Acceptance Tests"**

means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.

b) **"Application Program"**

means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.

c) **"Attachment"**

means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.

d) **"Business entity"**

means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

e) **"Buyer"**

means the State's authorized contracting official.

f) **"Commercial Software"**

means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.

g) **"Contract"**

means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.

h) **"Custom Software"**

means Software that does not meet the definition of Commercial Software.

i) **"Contractor"**

means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.

j) **"Data Processing Subsystem"**

means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.

k) **"Data Processing System (System)"**

means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.

l) **"Deliverables"**

means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.

m) **"Designated CPU(s)"**

means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.

n) **"Documentation"**

means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.

o) **"Equipment"**

is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).

p) **"Equipment Failure"**

is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.

q) **"Facility Readiness Date"**

means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.

r) **"Goods"**

means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

s) **"Hardware"**

usually refers to computer Equipment and is contrasted with Software. See also Equipment.

t) **"Installation Date"**

means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.

u) **"Information Technology"**

includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

v) **"Machine"**

means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

w) **"Machine Alteration"**

means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.

x) **"Maintenance Diagnostic Routines"**

means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.

y) **"Manufacturing Materials"**

means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.

z) **"Mean Time Between Failure (MTBF)"**

means the average expected or observed time between consecutive failures in a System or component.

aa) **"Mean Time to Repair (MTTR)"**

means the average expected or observed time required to repair a System or component and return it to normal operation.

bb) **"Operating Software"**

means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.

cc) **"Operational Use Time"**

means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.

dd) **"Performance Testing Period"**

means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.

ee) **"Period of Maintenance Coverage"**

means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.

ff) **"Preventive Maintenance"**

means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.

gg) **"Principal Period of Maintenance"**

means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

hh) **"Programming Aids"**

means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).

ii) **"Program Product"**

means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.

jj) **"Remedial Maintenance"**

means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.

kk) **"Site License"**

means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.

ll) **"Software"**

means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.

mm) **"Software Failure"**

means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.

nn) **"State"**

means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.

oo) **"System"**

means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.



pp) **"U.S. Intellectual Property Rights"**

means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

**2. CONTRACT FORMATION:**

- a. If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b. If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c. If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

**3. COMPLETE INTEGRATION:**

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

**4. SEVERABILITY:**

The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

**5. INDEPENDENT CONTRACTOR:**

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

**6. APPLICABLE LAW:**

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**7. COMPLIANCE WITH STATUTES AND REGULATIONS:**

- a. Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d. If this Contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e. To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or

services.

#### **8. CONTRACTOR'S POWER AND AUTHORITY:**

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

#### **9. ASSIGNMENT:**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

#### **10. WAIVER OF RIGHTS:**

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

#### **11. ORDER OF PRECEDENCE:**

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a. these General Provisions - Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b. contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c. information technology special provisions;
- d. statement of work, including any specifications incorporated by reference herein; and
- e. all other attachments incorporated in the contract by reference.

#### **12. PACKING AND SHIPMENT:**

- a. All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i. show the number of the container and the total number of containers in the shipment; and
  - ii. the number of the container in which the packing sheet has been enclosed.
- b. All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c. Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

**13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:**

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a. Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b. If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c. On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

**14. DELIVERY:**

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

**15. SUBSTITUTIONS:**

Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

**16. INSPECTION, ACCEPTANCE AND REJECTION:**

Unless otherwise specified in the Statement of Work:

- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b. All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d. All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e. The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

**17. SAMPLES:**

- a. Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

**18. WARRANTY:**

- a. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b. Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c. Unless otherwise specified in the Statement of Work:
  - a. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
  - b. Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
  - c. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e. Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
  - a. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
  - b. should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**19. SAFETY AND ACCIDENT PREVENTION:**

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

**20. INSURANCE:**

When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial

general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.

**21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**

- a. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b. STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

**22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**

- a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
  - i. Stop work as specified in the Notice of Termination.
  - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
  - iii. Terminate all subContracts to the extent they relate to the work terminated.
  - iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c. Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
  - i. The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
  - ii. The total of:
    - A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
    - B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
    - C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- d. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

**23. TERMINATION FOR DEFAULT:**

- a. The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
  - i. Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
  - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
  - iii. Perform any of the other provisions of this Contract.
- b. The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.

- c. If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d. If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
  - i. completed Deliverables,
  - ii. partially completed Deliverables, and,
  - iii. subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e. The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f. If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

#### 24. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal or State government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

#### 25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b. In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c. In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d. The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

#### 26. LIMITATION OF LIABILITY:

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b. The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent,

Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d. In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

**27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

**28. INDEMNIFICATION:**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- c. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- d. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**29. INVOICES:**

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

**30. REQUIRED PAYMENT DATE:**

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

**31. TAXES:**

Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

**32. NEWLY MANUFACTURED GOODS:**

All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

**33. CONTRACT MODIFICATION:**

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

**34. CONFIDENTIALITY OF DATA:**

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

**35. NEWS RELEASES:**

Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

**36. DOCUMENTATION**

- a. The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b. If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

**37. RIGHTS IN WORK PRODUCT:**

- a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created



- pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c. The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
  - d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
  - e. This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

**38. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**

- a. State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

**39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

- a. Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:

- i. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b. Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
  - c. Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort

to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- d. The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i. The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
  - ii. The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor supplied Operating Software; or
  - iii. The modification by the State of the Equipment furnished hereunder or of the Software; or
  - iv. The combination or utilization of Software furnished hereunder with non contractor supplied Software.
- e. Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

#### 40. EXAMINATION AND AUDIT:

Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

#### 41. DISPUTES:

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c. Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

#### 42. STOP WORK:

- a. The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
  - i. Cancel the Stop Work Order; or
  - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the

- termination for convenience clause of this Contract.
- b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
    - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
    - ii. The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
  - c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
  - d. The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

**43. FOLLOW-ON CONTRACTS:**

- a. If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
  - i. will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
  - ii. will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b. "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
  - i. development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
  - ii. development or design of test requirements;
  - iii. evaluation of test data;
  - iv. direction of or evaluation of another Contractor;
  - v. provision of formal recommendations regarding the acquisition of Information Technology products or services; or
  - vi. provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c. To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
  - i. to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
  - ii. where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d. The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

**44. PRIORITY HIRING CONSIDERATIONS:**

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

**45. COVENANT AGAINST GRATUITIES:**

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which

Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**46. NONDISCRIMINATION CLAUSE:**

- a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

**47. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

**48. ASSIGNMENT OF ANTITRUST ACTIONS:**

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a. In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
  - i. the assignee has not been injured thereby, or
  - ii. the assignee declines to file a court action for the cause of action.

**49. DRUG FREE WORKPLACE CERTIFICATION:**

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - i. the dangers of drug abuse in the workplace;
  - ii. the person's or organization's policy of maintaining a drug free workplace;
  - iii. any available counseling, rehabilitation and employee assistance programs; and,
  - iv. penalties that may be imposed upon employees for drug abuse violations.

- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
  - i. will receive a copy of the company's drug free policy statement; and,
  - ii. will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

**50. FOUR-DIGIT DATE COMPLIANCE:**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

**51. SWEATFREE CODE OF CONDUCT:**

- a. Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov/>, and Public Contract Code Section 6108.
- b. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

**52. RECYCLING:**

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).

**53. CHILD SUPPORT COMPLIANCE ACT:**

For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**54. AMERICANS WITH DISABILITIES ACT:**

Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

**55. ELECTRONIC WASTE RECYCLING ACT OF 2003:**

The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

**56. USE TAX COLLECTION:**

In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's

seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

**57. EXPATRIATE CORPORATIONS:**

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.

**58. DOMESTIC PARTNERS:**

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code section 10295.3.

## IT Purchase Special Provisions 01-21-03

### STATE MODEL INFORMATION TECHNOLOGY PURCHASE SPECIAL PROVISIONS TO BE USED WITH THE GENERAL PROVISIONS - IT. DEVELOP AND INCLUDE A STATEMENT OF WORK

#### 1 Liquidated Damages

##### a. General

In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

##### b. Timing of Delivery

i) Contractor will be liable for any liquidated damages for late performance (including late delivery) specified in the Statement of Work if Contractor fails to provide any subject service or deliver any subject Deliverable, ready for use in substantial conformance with its specifications, on or before the Delivery Dates in the Statement of Work. Unless otherwise specified in the Statement of Work: (A) such liquidated damages will stand in lieu of all other damages for such late performance or nonperformance; and (B) if the Contractor fails to provide a software Deliverable listed in the Statement of Work by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to the listed software Deliverable.

ii) The State will pay additional monetary compensation for early performance to the extent specifically called for in the Statement of Work.

#### 2 Title to Equipment

Unless otherwise specified in the Statement of Work, title to the Equipment shall remain in the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

#### 3 Price Decline (Applicable to Third Party Contractors)

Prices quoted shall be the maximum for the contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after contract award, but prior to a third party contractor taking title to the Equipment, and should the third party contractor be the recipient of this manufacturer's price decline, it shall be passed on in total to the State by the third party contractor. Any interest, finance, or other charges based on the contract price will be recomputed using the original bid rates and the differences will also be passed to the State in total.

#### 4 Price Decline (Applicable to Manufacturers)

Prices quoted shall be the maximum for the contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after contract award, but prior to the State taking title to the Equipment, it shall be passed on in total to the State by the manufacturer. Any interest, finance, or other charges based on the contract price will be recomputed using the original bid rates and the differences will also

be passed to the State in total.

DGS Procurement Division PURCHASE SPECIAL PROVISIONS Page 2 01/21/03



**Maintenance Special Provisions 01/21/03****TO BE USED WITH THE GENERAL PROVISIONS - IT. DEVELOP AND  
INCLUDE A STATEMENT OF WORK.**

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

**1 Maintenance of Equipment**

The Contractor is responsible under this Contract to maintain the Equipment identified in the Statement of Work. The Contractor shall keep the Equipment in good operating condition and shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with this Contract, with the maintenance charges, Period of Maintenance Coverage, locations, etc. listed in the Statement of Work.

**2 Exclusions**

a. Maintenance service does not include:

1) Electrical work external to the Machines or maintenance of accessories, alterations, Attachments, or other devices not listed in the Statement of Work.

2) Repair of damage or increase in service time caused by: accident; disaster, which shall include, but not be limited to, fire, flood, water, wind, and lightning; transportation; neglect, misuse, fault or negligence of the State; and alterations, which shall include, but not be limited to, any deviation from Contractor's physical, mechanical, or electrical Machine design, and Attachments.

3) Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate Contractor Installation Manual-Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air conditioning or humidity control).

4) Repair of damage or increase in service time attributable to the use of the Machines for other than the data processing purpose for which it was acquired.

5) Furnishing platens, supplies or accessories; painting or refinishing the Machines or furnishing material therefore; inspecting Machines altered by other than Contractor; making specification changes or performing services connected with the relocation of Machines; or adding or removing accessories, Attachments or other devices.

6) Such service which is impractical for Contractor to render because of alterations or connection by mechanical or electrical means to another Machine.

7) Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies or materials not meeting Contractor's specifications for such supplies or materials.

8) Repair of damage or increase in service time caused by conversion from one Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than the Contractor.

9) Repair or maintenance by Contractor that is required to restore Equipment to proper operating condition after any person other than Contractor's employee had performed maintenance or otherwise repaired an item of Equipment.

b. The Contractor may be required to perform repair or maintenance on excluded items in paragraph a, above. An additional charge for such repair or maintenance shall be at the established Contract rates in the Statement of Work, or if not stated, be at Contractor's applicable time and material rates and terms then in effect. The procedures for authorization of such maintenance may be the same as those for Remedial Maintenance outside of the Principle Period of Maintenance.

**3 Responsibilities of the Contractor**

a. This maintenance service includes the following and may be further described in the Statement of Work:

1) Scheduled Preventive Maintenance based upon the specific needs of the individual Machines as determined by manufacturer.

2) Unscheduled, on-call Remedial Maintenance. Such maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by the Contractor.

b. Maintenance parts will be furnished by Contractor and will be new or equivalent to new in performance when used in these Machines. Replaced maintenance parts become the property of the Contractor.

c. Preventive maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor, which is consistent with the State's operating requirements, and which is based upon the specific needs of the Equipment as determined by the manufacturer. Such schedules shall be in writing and shall specify the frequency and duration of Preventive Maintenance for the Equipment in the Statement of Work.

d. Remedial Maintenance shall be commenced promptly after notification by an authorized State representative that Equipment and/or Software is inoperative.

#### **4 Responsibilities of the State**

a. The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the Contractor's published specifications for the Equipment listed on the Statement of Work.

b. Unless mutually agreed to by the Contractor and the State, State personnel will not perform maintenance or attempt repairs to the Equipment while such Equipment is governed by the terms of this Contract.

c. Subject to the State's security regulations, the Contractor shall have full and free access to the Machines to provide service thereon.

#### **5 Maintenance Coverage**

a. Period of Maintenance Coverage:

1) The State may select a period or periods of maintenance coverage, as stated in the Statement of Work, in accordance with the following:

(a) A minimum monthly maintenance charge entitles the State to maintenance coverage during the Principal Period of Maintenance.

(b) The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the Statement of Work

2) The hours of maintenance coverage for a Machine on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All Machines covered under this Contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any Machine in the System.

3) The State may change its selected Period of Maintenance Coverage by giving Contractor fifteen (15) days prior written notice.

b. Preventive Maintenance (scheduled)

Preventive maintenance can either be performed within or outside of the Principal Period of Maintenance (PPM). An additional charge may be made for Preventive Maintenance to be performed outside of the PPM, as set forth in the Statement of Work. No additional charge shall be made for Preventive Maintenance that is to be performed within the PPM.

c. Remedial Maintenance (unscheduled)

1) Remedial Maintenance shall be performed after notification by authorized State personnel that the Equipment is malfunctioning.

2) The Contractor shall provide the State with a designated point of contact and will initiate the Remedial Maintenance.

3) There shall be no additional maintenance charges for:

(a) Remedial Maintenance during the Period of Maintenance Coverage unless the Remedial Maintenance is due to the fault or negligence of the State.

(b) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.

(c) Remedial Maintenance required because the scheduled Preventive Maintenance preceding the malfunction had not been performed, unless the State had failed to provide access to the Equipment.

(d) For time of delay beyond the PPM, Contractor shall continue to perform maintenance for the same amount of time outside the covered period without additional charge to the State.

(e) The first hour of work performed when Remedial Maintenance service is requested during the covered Period of Maintenance and the actual work is begun outside such period.

#### **6 Maintenance Charges**

a. The monthly maintenance charges described include all maintenance costs, and the State will pay no additional charges unless specifically set forth in this Contract. Maintenance rates shall be firm for the Contract period subject to any maximum annual maintenance escalation as set forth in the Statement of Work.

b. Maintenance charges for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable Total Monthly Maintenance Charge, for each day maintenance was provided.

c. There will be no charge for travel expense associated with maintenance service or programming service under this Contract except that actual travel expenses will be charged in those instances where the site at which the Machine is located is not normally accessible by private automobile or scheduled public transportation.

d. All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of Machines, engineering changes and altered programming) which may be made available by Contractor to the State at no additional charge or at Contractor's then applicable time and material charges, in connection with any Machines or programming supplied under this Contract, shall be subject to the terms and conditions of this Contract, unless such activities are provided under another written agreement signed by the State and the Contractor.

#### **7 Maintenance Credit for Inoperative Machines**

The Contractor shall grant a proportionate maintenance credit on a Machine shown in the Statement of Work when the Machine is inoperative for consecutive scheduled work periods totaling 24 hours from the time the State notifies the Contractor the Machine was inoperative, provided (1) the Machine became inoperative through no fault of the State, and (2) the breakdown was attributable to Equipment Failure. The credits to be granted by the Contractor to the State shall be as reflected in the Statement of Work.

#### **8 Engineering Changes**

Engineering changes, determined applicable by Contractor, will be controlled and installed by Contractor on Equipment covered by this contract. The State may elect to have only mandatory changes, as determined by Contractor, installed on Machines so designated. A written notice of this election must be provided to the Contractor for confirmation. There shall be no charge for engineering changes made. Any Contractor-initiated change shall be installed at a time mutually agreeable to the State and the Contractor. Contractor reserves the right to charge, at its then current time and material rates, for additional service time and materials required due to noninstallation of applicable engineering changes after Contractor has made a reasonable effort to secure time to install such changes.

#### **9 Relocation of Equipment**

a. In the event the Equipment being maintained under the terms and conditions of this Contract is moved to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location.

b. The charges of the Contractor to dismantle and pack the Equipment and installation at the new location shall be at the rates set forth in the Statement of Work. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any.

c. If Contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility will be applicable. If the move is conducted by other than Contractor, State agrees to pay re-certification charges to Contractor at rates set forth in the Statement of Work.

#### **10 Termination**

Notwithstanding the Termination for Convenience provisions contained in the General Provisions, upon thirty (30) days' written notification to the Contractor, State may terminate, at no cost to the State, maintenance for all or any portion of the Equipment identified in the Statement of Work.

**Software Special Provisions 01/21/03**

STATE MODEL  
INFORMATION TECHNOLOGY  
SOFTWARE SPECIAL PROVISIONS  
TO BE USED WITH THE GENERAL PROVISIONS -- IT. DEVELOP AND  
INCLUDE A STATEMENT OF WORK.

**1 License Grant**

a. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the Software Products listed in Statement of Work of this Contract (hereinafter referred to as "Software Products").

b. State may use the Software Products in the conduct of its own business, and any division thereof.

c. The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.

d. By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.

**2 Encryption/CPU ID Authorization Codes**

a. When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.

b. In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.

c. When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

**3 Fees and Charges**

Upon acceptance of Software by State, in accordance with Paragraphs 5 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in Statement of Work. Charges will commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

**4 Maintenance**

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

a. The correction of any residual errors in any Software Product that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:

1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.

2) Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of said Software Product (or of the affected portions) in machine-readable form.

3) The Contractor shall attempt to correct Software Product errors within a reasonable time.  
b. Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular

Hardware or Operating System at rates in accordance with the Statement of Work.

c. If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.

## **5 Acceptance of Software**

a. Commercial Software. Acceptance of Commercial Software will be governed by the terms and conditions of the license agreement governing such Software.

b. Custom Software. Unless otherwise provided in the Statement of Work, acceptance procedures for Custom Software will be as set forth in this subsection (b). The State shall be deemed to have accepted each Custom Software Product (i) upon its issuance of written notice of such acceptance or (ii) sixty (60) days after the Installation Date, unless at or before that time the State gives Contractor written notice of rejection (collectively, "Acceptance"). No payment for Custom Software will be due before Acceptance thereof, except to the extent required by progress payment terms in the Statement of Work. Any notice of rejection will explain how the Custom Software Product fails to substantially conform to the functional and performance specifications of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The State, in its sole discretion, will have the option to re-perform the acceptance test. If the Contractor is unable to remedy the deficiency within (60) days of notice of rejection, the State shall have the option of accepting substitute Software, terminating for default the portion of the Contract that relates to such Custom Software, or terminating this Contract in its entirety for default.

## **6 Right To Copy or Modify**

a. Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any one time without prior written consent from Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.

b. The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.

c. The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this sub-section c) will be construed to contradict the terms of any separate applicable third party license agreement. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Contract.

## **7 Future Releases**

Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of any Software Product are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

**Personal Services Special Provisions 02/08/07****STATE MODEL INFORMATION TECHNOLOGY  
PERSONAL SERVICES SPECIAL PROVISIONS**

TO BE USED WITH THE GENERAL PROVISIONS --IT. DEVELOP AND INCLUDE A STATEMENT OF WORK.

**1. Contract Type**

a. Unless otherwise specified, the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.

b. To the extent that additional work not foreseen at the time this Contract is executed must be accomplished, Work Authorizations, as described in the Statement of Work, will be the means for defining and authorizing such work on a Labor Hour basis.

**2. Personnel**

a. Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.

b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.

c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.

d. In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of services under this Contract.

**3. Responsibilities of the State**

a. The State shall provide normal office working facilities and equipment reasonably necessary for Contractor performance under this Contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the Statement of Work.

b. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the Statement of Work.

c. The Contractor will not be responsible for any delay, cost increase, or other consequence to the extent that it is caused by the State's failure to fulfill responsibilities set forth herein. In the event of any claim for equitable adjustment to price, schedule, or both, the parties will negotiate in good faith regarding execution of a Contract amendment. Should the Contractor determine that a delay exists or is probable due to a failure of the State, the Contractor will promptly notify the State in writing.

**4. Unanticipated Tasks**

a. In the event that additional work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this Section will be employed.

b. For each item of unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared in accordance with the sample attached as Exhibit A.

c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract nor in any way amend or supersede any of the other provisions of this Contract.

d. Each Work Authorization shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor, the job classification or approximate skill level of the personnel to be made available by the Contractor, an

identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, an estimated time schedule for the provisions of these services by the Contractor, completion criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, the Contractor's estimated work hours required to accomplish the purpose, objective or goals, the Contractor's billing rates per work hour, and the Contractor's estimated total cost of the Work Authorization.

e. All Work Authorizations must be in writing prior to beginning work and signed by the Contractor and the State.

f. The State has the right to require the Contractor to stop or suspend work on any Work Authorization pursuant to the "Stop Work" provision of the General Provisions.

g. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:

1) If, in the performance of the work, the Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the State in writing of the Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:

(a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld), or  
(b) Terminate the Work Authorization, or  
(c) Alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

2) The State will notify the Contractor in writing of its election within seven (7) calendar days after receipt of the Contractor's notification. If notice of the election is given to proceed, the Contractor may expend the estimated additional work hours or services. The State agrees to reimburse the Contractor for such additional work hours.

## **5. Invoicing and Payment for Services**

a. During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to the State of identified Deliverables, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:

1) The number of Deliverables provided to the State divided by the total number of Deliverables required to be delivered to the State, less a ten percent (10%) withhold, less any amounts previously invoiced; or

2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less a ten percent (10%) withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent (10%).

b. For those Milestones which do not involve delivery to the State of identified Deliverables, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent (10%) withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.

c. Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to the State, may be submitted for payment. Nothing herein will be construed to waive or contradict any requirement of California Public Contract Code section 12112 or any similar or successor provision.

d. In the event that work not specified in the Statement of Work is performed with the State's written consent, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. In no event shall the total amount paid for such work exceed ten percent (10%) of the value of personal services anticipated by this Contract.

e. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.

f. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the ceiling amount of the Contract, with the balance to be invoiced upon completion of the Contract, in accordance with the acceptance criteria set forth herein.

g. In the event of a conflict between the terms of this Section 5 and those of the Section of this Contract entitled "Acceptance of Software," the latter will govern.

## **6. Contractor Evaluation**

In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Contracting Manual Volume 1, Section 3.02.5. The State contracting agency, upon Contract

completion, will complete and forward the Contractor evaluation to the Department of General Services.

**7. Conflict of Interest**

During the performance of this contract, should the Contractor become aware of a financial conflict of interest that may foreseeably allow an individual or organization involved in this Contract to materially benefit from the State's adoption of an action(s) recommended as a result of this contract, the Contractor must inform the State in writing within 10 working days. If, in the State's judgment, the financial interest will jeopardize the objectivity of the recommendations, the State shall have the option of terminating the Contract.

Failure to disclose a relevant financial interest on the part of the Contractor will be deemed grounds for termination of the Contract with all associated costs to be borne by the Contractor and, in addition, the Contractor may be excluded from participating in the State's bid processes for a period of up to 360 calendar days in accordance with Public Contract Code section 12102(j).



**EXHIBIT A****WORK AUTHORIZATION**

SAMPLE

**TITLE:** 70/752 Output Formatter**Task Summary:** Develop program to format and print simulated 70/752 displays using a sequential data set as input.**Schedule Dates:****Start Date:** April 2, 2007  
**Completion Date:** April 30, 2007**Estimated Labor-Hours**

Labor	Hour Rate	Estimated Total Cost
100	\$90.00	\$9,000.00

**Contractor Personnel to Be Assigned**

Jane Doe

**Job Classification/Skill Level**

Staff Programmer Analyst

**Completion Criteria:**

Acceptance of program by the State.

This task will be performed in accordance with this Work Authorization and the provisions of Contract No. \_\_\_\_\_.

**Approval**\_\_\_\_\_  
Contract Project Manager\_\_\_\_\_  
State Project Manager

## Appendix B

### WCSA Master Agreement State Participating Addendum Primary Points of Contact

#### STATE OF CALIFORNIA

Joyce Griffin  
Department of General Services  
Procurement Division  
Multiple Award Program  
707 Third Street, 2<sup>nd</sup> Floor, MS 202  
West Sacramento, CA 95605

Phone: (916) 375-4576  
Fax: (916) 375-4663

#### CONTRACTOR

Phone: (808)  
Fax: (808)

Appendix C

MILESTONE COMPLETION CERTIFICATE

CHANGE REQUEST

(Samples)



**APPENDIX C**  
**MILESTONE/SERVICE COMPLETION CERTIFICATE**

Pursuant to the above referenced order between Cisco Systems, Inc. ("Cisco") and Customer ("Customer"), Customer hereby certifies, by the signature of an authorized representative, that the Milestone/Service described below has been completed in a satisfactory manner on the date indicated below and in accordance with the terms of the ordering documents:

Milestone/Service

Date

Purchase Order Number: \_\_\_\_\_  
Cisco Sales Order Number: \_\_\_\_\_  
SOW/ Project ID Number: \_\_\_\_\_  
Dollar Amount of Services Completed: \_\_\_\_\_  
Dollar Amount of T&E: \_\_\_\_\_  
Project Complete (Yes/No): \_\_\_\_\_

**Submitted by:**

**CONTRACTOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Acknowledged and Agreed:**

**CUSTOMER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## Appendix C CHANGE REQUEST

In reference to the Section titled Change Management Procedures of the above referenced ordering documents between Cisco Systems, Inc. ("Cisco") and Customer ("Customer"), both parties hereby certify, by the signature of an authorized representative, that this Change Management Request will amend and be fully incorporated into the existing ordering document.

1. Change Request Number: \_\_\_\_\_

2. Reason for Change Request:

3. Changes to SOW:

4. Schedule Impact:

5. Cost Impact:

	SOW/Change Request	SERVICES	T&E	TOTAL
a.	Original Value of SOW	\$0.00	\$0.00	\$0.00
b.	Value of Change Request No. 1	\$0.00	\$0.00	\$0.00
c.	New Value of SOW:	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

6. **Purchase Order Issuance (if applicable):** Customer shall issue a written Purchase Order to Contractor, or shall issue an amendment to its original Purchase Order issued under this ordering document, for the total amount of **\$0.00**.

Except as changed herein, all terms and conditions of the ordering document remain in full force and effect.

IN WITNESS THEREOF, the duly authorized representatives of the parties hereto have caused this Change Request to be fully executed.

CONTRACTOR:

CUSTOMER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_